

Fair Political Practices Commission
MEMORANDUM

To: Chairman Johnson, Commissioners Hodson, Huguenin, Leidigh, and Remy

From: Brian G. Lau, Commission Counsel
Scott Hallabrin, General Counsel

Subject: Prenotice Discussion of Amendment to Regulation 18735

Date: December 21, 2007

Proposed Commission Action and Staff Recommendation: Approve publication of notice for amendment of Regulation 18735 at the Commission meeting in March 2008.

Background: Each public agency must adopt a conflict-of-interest code requiring agency officials or employees who make or participate in making governmental decisions to disclose their interests in investments, businesses, real property, and sources of income that may foreseeably be materially affected by the decisions. (Sections 87300 and 87302(a).) Generally, each official designated in a conflict-of-interest code is required to file:

- (1) An assuming office statement within 30 days of assuming office disclosing investments, business positions, and real property held on, and income received during the 12 months before, the date of assuming office;
- (2) An annual statement disclosing investments, business positions, real property, and income held or received in the prior calendar year or, if assuming office in the calendar year, since assuming office; and
- (3) A leaving office statement within 30 days of leaving office disclosing investments, business positions, real property, or income held or received during the period between the last statement filed and leaving office. (Section 87302(b).)

Interpreting Section 87302(b), Regulation 18735 was adopted to streamline reporting in those circumstances in which a designated employee transfers to another position within the same agency. Regulation 18735 provides that a designated employee transferring to another designated position within the agency, or beginning a new term in the same position within 30 days of a prior term, is not deemed to have left or assumed office. Accordingly, the employee is not required to file a leaving or assuming office statement. The employee must, however, continue filing annual statements as specified in Regulation 18735. Moreover, a designated employee transferring to a designated position of board member, commissioner, head of agency, executive director, or other chief executive officer within the agency must also amend his or her most recent

statement within 10 days of transferring to disclose investments and real property held on the date of the transfer.

Summary of Proposed Amendments: *Designated employee whose disclosure category is amended between the annual filing dates:* Staff proposes amending Regulation 18735 to clarify the reporting requirements for a designated employee when a disclosure category is amended between the annual filing dates for the designated position. While a designated employee does not “leave office” or “assume office” when the disclosure category for the employee’s position is amended midyear, disclosure requirements will likely be changed and the regulations do not address how to report economic interests on the employee’s next required statement. Accordingly, staff proposes language clarifying that a designated employee whose disclosure category is amended midyear shall file his or her next required statement under the amended disclosure category.

Designated employees of the Legislature: Staff also proposes a new reporting rule for a designated employee of the Legislature who is in a filing category requiring full disclosure, elected to the Legislature, assumes legislative office in December or January, and also assumes the legislative office within 30 days after leaving his or her designated employee position. In lieu of requiring the person to file a leaving office statement for the staff position and an assuming office statement for the position of Legislator, staff proposes allowing the Legislator to file a single annual statement disclosing interests held or received during the prior year. In this circumstance, no reportable interests will be lost because the newly elected Legislator has the same level of disclosure as he or she did as a designated employee.

Amendments to Subdivision (b): Finally, staff proposes several amendments to Regulation 18735(b). Substantively, the amendments proposed include (1) language clarifying that the subdivision only applies to a designated employee transferring to a position of board member, commissioner, head of agency, executive director, or other chief executive officer *of the same agency and designated in the agency’s conflict-of-interest code* and (2) a requirement that the employee also disclose business positions and sources of income, not previously disclosed, within 10 days of transferring to the specified position. For added clarity, staff is also proposing a non-substantive restructuring of subdivision (b).

The proposed amendments to Regulation 18735 are shown in the attached copy in bold typeface. The proposed amendments to Regulation 18735 include other technical and non-substantive revisions.

Attachment:

1 – Proposed Amendment to Regulation 18735

2 – Government Code Section 87302